

FINAL BILL REPORT

ESSB 5178

C 268 L 21
Synopsis as Enacted

Brief Description: Establishing timely considerations of waivers of select state health care laws to enable timely response by the health care system during a governor-declared statewide state of emergency.

Sponsors: Senate Committee on Health & Long Term Care (originally sponsored by Senators Cleveland, Muzzall and Wilson, C.).

Senate Committee on Health & Long Term Care
House Committee on Health Care & Wellness

Background: The Governor has statutory authority to proclaim a state of emergency when a public disorder, disaster, energy emergency, or riot exists within the state and it affects life, health, property, or the public peace. An emergency proclamation permits the Governor to exercise the office's emergency powers, which are also provided by statute. These emergency powers fall into two general categories—the power to prohibit certain activities; and the power to waive or suspend certain statutory or regulatory provisions of law.

The Governor's power to waive or suspend provisions of law includes both statutes and agency rules. Specifically, the Governor may waive or suspend statutory and regulatory obligations or limitations that prescribe the procedures for conduct of state business, and the Governor may waive or suspend state agency orders, rules, or regulations, but only if certain conditions are met. Those conditions are:

- strict compliance with the statute, order, rule, or regulation would in any way prevent, hinder, or delay necessary action in coping with the emergency;
- authority to waive or suspend a specific provision has not already been expressly granted to another statewide elected official;
- the waiver or suspension would not conflict with federal requirements for federal funds to the state; and
- the waiver or suspension would not conflict with first amendment rights to freedom of speech or peaceable assembly.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not part of the legislation nor does it constitute a statement of legislative intent.

In response to the COVID-19 pandemic and the state of emergency declared in Washington State, the Governor waived certain statutes related to health care facilities and providers. When determining what health care related statutes would be waived, the Governor's Office worked with the Department of Health, the State Board of Health, and health care professional regulatory boards and commissions, and stakeholders, to decide which statutes would be waived.

Summary: If, when declaring or amending a statewide state of emergency, the Governor determines the emergency demands immediate action by hospitals to prevent critical health system failures and ensure hospitals' ability to work with emergency management in responding to the emergency, the Governor shall, either simultaneously or within five days of that determination, specify within the emergency order or amended emergency order which of the following health care related statutes and substantially equivalent regulations shall be waived or suspended based on the nature of the declared emergency.

Certificate of need requirements are waived for:

- the construction, development, or opening of a new health care facility, or the reopening of a shuttered facility;
- changes in bed capacity for a health care facility that increases the total number of licensed beds or redistributes beds among acute care, nursing home care, and assisted living facilities; and
- increases in the number of dialysis stations in a kidney disease center.

Facility licensure requirements are waived for:

- hospital premise license requirements;
- requiring a hospital to request clinical privilege information on physicians, physician assistants, or advanced registered nurse practitioners before granting privileges; and
- license requirements and certificate of need requirements for rural health care facilities participating in the Washington Rural Health Access Preservation pilot.

Pharmacy licensure requirements are waived for:

- pharmacy license locations;
- hospital pharmacy license locations; and
- license of location exhibition requirements.

Health care provider requirements are waived for:

- specific due dates required for health care professional credentials; and
- medical assistant supervision.

Hospitals that rely on waivers or suspensions of select state health care laws shall notify the Department of Health within 14 days of initiating such reliance.

The Governor is not prevented from waiving or suspending any statutes and substantially

equivalent regulations outside the established time frames and may waive or suspend any additional statutes, without limitation, as the Governor deems necessary to address the emergency.

The select state health care laws that are automatically waived or suspended upon the Governor's declaration of a statewide state of emergency do not apply except to projects undertaken to provide or respond to surge capacity, including temporary increases in bed capacity, during the Governor's declaration of a statewide state of emergency. Projects and increases in bed capacity must comply with these statutory and regulatory provisions after the termination of the state of emergency.

Votes on Final Passage:

Senate	47	2	
House	91	6	(House amended)
Senate	43	5	(Senate concurred)

Effective: July 25, 2021